

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ANGEL MUNIZ,	:	CIVIL NO. 3:10-CV-2635
	:	
Plaintiff,	:	(Judge Caputo)
	:	
v.	:	
	:	(Magistrate Judge Carlson)
C.O. SULLIVAN, et al.,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATION

I. Case Status

This is a civil rights action brought by Angel Muniz, a state inmate. Muniz's complaint arises out of a May 28, 2010, incident in which Muniz alleged that he was assaulted by prison staff while housed in the Schuylkill County Prison awaiting trial on state criminal charges. (Id.) The current status of this case is as follows:

On January 3, 2012, this court entered a case management order in this case which set a schedule in this litigation which provided that discovery would close on April, 1, 2012, dispositive motions would be filed in April 2012, and the parties would notify the court regarding whether they wish to consent to trial before a United States Magistrate Judge by April 2012.

On June 14, 2012, we then instructed the parties to notify the court by June 28, 2012, if they would consent to proceed before a magistrate judge, informing the

parties that: “Otherwise we shall refer the matter to the District Court to schedule trial.” No dispositive motions have been filed and, while the defendants have consented to proceed before the undersigned, the plaintiff has not consented. Therefore, with the close of discovery and the expiration of the motions deadline, this matter should now be scheduled for trial.

II. Recommendation

The discovery period in this case has closed. The time for filing dispositive motions has passed, and all dispositive motions have been fully resolved. With the exception of a motion by the plaintiff for appointment of trial counsel (Doc. 76.), as to which we believe that it would be it would be imprudent for the magistrate judge to rule upon if we are not assigned to try the case, no other motions are pending¹. Accordingly, IT IS RECOMMENDED that the case be listed for trial at the convenience of the district court, and that the pending motion for appointment of counsel, (Doc. 76.), which will affect the trial before this court, should be considered in the first instance by the district court.

The parties are further placed on notice that pursuant to Local Rule 72.3:

¹While we feel that it was appropriate in the first instance to defer to the district court on this motion which may affect the conduct of any trial conducted by the district court, if the district court wishes, we are prepared to rule on, and resolve, this final pretrial motion.

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions

Submitted this 24th day of July 2012.

S/Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge